

THE MARK O. HATFIELD

# COURTHOUSE NEWS

A Summary of Topical Highlights from decisions of the  
U.S. District Court for the District of Oregon  
A Court Publication Supported by the Attorney Admissions Fund  
Vol. V, No. 24, November 2, 1999

## Criminal Law

Judge Ancer Haggerty denied motions for bills of particular and motions to sever defendants in a 25 defendant criminal cocaine conspiracy prosecution. The court granted motions to sever three §922(g) gun possession counts, denied motions to dismiss based upon alleged violations of the Petite Policy and rejected claims that the indictment was either duplicitous or multiplicitous in relying upon many of the same facts to charge both a drug and money laundering conspiracy. Judge Haggerty also denied defendants' request for a Franks hearing and denied numerous motions to suppress based upon alleged errors in the affidavits used to support the warrants.

Following an evidentiary hearing, the court granted two motions to suppress evidence based upon a finding that police officers executing search warrants deliberately failed to serve copies of the warrant at the outset of the search as required by Fed. R. Crim. P. 41(d). The court applied the Ninth Circuit's recent holding in United States v. Gantt and noted that while there was no evidence of bad faith on the part of the officers, no excuse was offered to justify the errors. Judge Haggerty also suppressed evidence seized from a house following a fire, finding that the

scope of the search exceeded that which was necessary to investigate the cause of the fire. United States v. Abbit, CR 98-208-HA (Opinions, Oct. 22, 1999 (34 pages); October 29, 1999 (10 pages)).

AUSA: Richard Scruggs  
Defense Counsel: Gayle Kverland,  
Ron Hoevet, et. al.

## Employment

The Americans with Disabilities Act (ADA) and the Rehabilitation Act apply extraterritorially to a College's overseas study program. Plaintiff was a paraplegic student who participated in a study program in Australia. During her stay, she claimed that defendants failed to reasonably accommodate her disability by subjecting her to unsafe toilets, unsanitary medical supplies and denying her participation in many class activities.

Defendants moved for summary judgment against the federal statutory claims on grounds that the federal laws were inapplicable to an overseas program. Judge Ann Aiken rejected this argument based upon the fact that the defendant college received federal funds for its overseas programs and because there were extensive contacts between the U.S. defendants and the overseas programs which may have resulted in significant effects upon

plaintiff upon her return to the U.S. Further, all of the parties involved were U.S. citizens.

Judge Aiken granted the defense motion for summary judgment against plaintiff's defamation claim since the alleged defamatory statement was included within a letter which was never sent outside of the college. The court further noted that the letter was subject to an absolute privilege since it was drafted with the college's lawyer and sent to the plaintiff's lawyer regarding the litigation. Plaintiff's intentional infliction of emotional distress claim was also denied upon the court's finding that the alleged conduct may have been insensitive, but failed to constitute intentionally cruel or outrageous conduct. Bird v. Lewis & Clark College, CV 98-691-AA (Opinion, Oct. 22, 1999 - 12 pages).

Plaintiff's Counsel: Elizabeth Carl  
Defense Counsel: David Ernst

## Contracts

Plaintiff filed an action against his former employer for breach of contract. Plaintiff claimed that he was hired based upon a promise of a base salary and bonuses and that defendant failed to pay bonuses.

Approximately one year after plaintiff was hired, defendant hired a consultant to review its operations and

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the consultant recommended that plaintiff be terminated. Defendant offered plaintiff a severance package which, after negotiation, plaintiff accepted. Judge Janice Stewart granted a defense motion for summary judgment based upon a finding that the severance agreement constituted a release of all claims. The court rejected the plaintiff's claim that there was an ambiguity in the contracts. The court also rejected plaintiff's argument that O.R.S. 17.075 precluded enforcement of the release; the court held that the Oregon statute was inapplicable to contract claims and that in any event, application of the statute would be barred as untimely. Maier v. Pacific Heritage Homes, Inc., CV 98-1095-ST (Opinion, Oct. 18, 1999 - 20 pages).

Plaintiff's Counsel: Martin Dolan  
Defense Counsel: Sarah Ryan

**7** A company that failed in its efforts to purchase a timber operation filed an action against the seller asserting breach of contract and breach of the implied duty of good faith and fair dealing claims. Judge Janice Stewart denied a defense motion for summary judgment finding genuine issues of fact as to whether the defendant committed an anticipatory breach, whether defendant's rejection of plaintiff's financing commitment letter was in good faith and whether plaintiff was capable of performing the contract. Klamath Pacific Int'l, Inc. v. Weyerhaeuser Co., CV 98-526-ST (Opinion, Oct. 15, 1999).

Plaintiff's Counsel: Christopher Kent

Defense Counsel: Peter Richter

## Jurisdiction

In a patent infringement action against a corporation and several individuals, Judge Ann Aiken granted an individual defendant's motion to dismiss for improper venue. The court found that it had personal jurisdiction over the individual because, as an employee of the defendant corporation, he had initiated contact with an Oregon resident and had personally benefitted from allegedly infringing actions which took place within the Oregon forum. However, because there was no evidence that the individual defendant was an alter ego for the corporation or that he effectively controlled the corporation, Judge Aiken held that venue over the individual defendant was improper under 28 U.S.C. § 1391(c). Accordingly, the court granted the individual defendant's motion to dismiss. MSM Investments Co., LLC v. Jacob, CV 97-1522-AA (Opinion, Sept. 1999).

Plaintiff's Counsel:  
William Birdwell  
Defense Counsel:  
Julianne Ross Davis;  
Don Marmaduke

## Environment

The Forest Service District Ranger issued a Finding of No Significant Impact for a timber sale and plaintiff filed an administrative appeal of that decision. The Forest Service never issued a written decision from that

appeal and instead, sent plaintiff a letter indicating that since 45 days had elapsed, its decision on the timber sale was final. Plaintiff filed an action in federal court alleging that the Forest Service's failure to issue a decision on his appeal violated the Administrative Procedures Act.

Defendant sought dismissal on grounds that plaintiff lacked standing because he was not entitled to an appeal decision under the Appeals Reform Act. Judge Aiken denied the motion on this basis, but granted dismissal for lack of standing because the plaintiff failed to allege how the defendant's failure to decide an appeal adversely affected his enjoyment and use of the forest. The court noted that plaintiff's federal court claim was a narrow one and that plaintiff did not challenge the underlying action. Ryberg v. Williams, CV 99-140-AA (Opinion, August, 1999 - 5 pages).

Plaintiff's Counsel: Bob Pangburn  
Defense Counsel: Jeffrey Handy

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